

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 2:19-cr-00162

KEVIN LEE BOSTON, II

MEMORANDUM OPINION AND ORDER

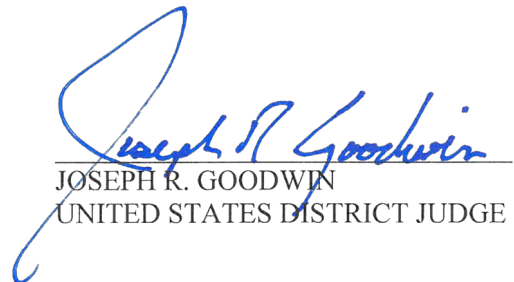
Pending before the court are Defendant's pro se letter-form motions for compassionate release and appointment of counsel, [ECF Nos. 40, 41], filed by Defendant Kevin Lee Boston, II. In the motion, Mr. Boston requests compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). For me to reduce or modify Mr. Boston's sentence under compassionate release, I must find that he has exhausted his administrative remedies or waited 30 days from petitioning the Warden at the facility in which he is housed, has demonstrated "extraordinary and compelling reasons," is not a danger to the safety of others, and find that his release is consistent with § 3553(a) factors. *See e.g., United States v. Howard*, No. 4:15-CR-00018-BR, 2020 WL 2200855, at \*2 (E.D.N.C. May 6, 2020); U.S.S.G. § 1B1.13 (2018). For COVID-19 related compassionate release motions, I have interpreted "extraordinary and compelling reasons" to include the combination of a health condition that puts the defendant at a higher risk of severe illness from COVID-19 and prison conditions

that put the defendant at a higher risk for contracting COVID-19. *See United States v. White*, No. 2:17-CR-00198-4, 2020 WL 3244122, at \*3 (S.D. W. Va. June 12, 2020).

In this case, Mr. Boston has not indicated that he has made any such required request to the Warden. Therefore, his motion for compassionate release, [ECF No. 41], is **DENIED without prejudice**. For reasons before the court, Mr. Boston's motion for appointment of counsel, [ECF No. 40], is also **DENIED**. This ruling means that Mr. Boston may petition the court again after making a request to the Warden *and* either exhausting his administrative remedies through the Bureau of Prison's appeal process or waiting 30 days from the Warden's receipt of his request, whichever is earlier. *See* 18 U.S.C. § 3582(c)(1)(A).

The court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

DATE: October 5, 2020



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE